

Selectmen's Meeting – December 1, 2008

Mr. Silvia, Dr. Bowcock and Mr. Murphy were present.

Also in attendance was Jeffrey Osuch.

Mr. Silvia called the meeting to order at 6:30 p.m.

Dr. Bowcock motioned to approve the minutes of November 17, 2008. Mr. Murphy seconded. Vote was unanimous.

Dr. Bowcock motioned to approve the minutes of the November 17, 2008 executive session. Mr. Murphy seconded. Vote was unanimous.

LIQUOR LICENSE HEARING
DAVLAU CORP. D/B/A DOWN THE HATCH

Liquor License Hearing was scheduled for 7:00 p.m. to act on the application submitted by Davlau, Corp. d/b/a Down the Hatch, 56 Goulart Memorial Drive, for an altered premise transaction. Proposed alteration is to add approximately 220 square feet to the existing outside fenced in patio. Attorney John M. Mathieu representing Down the Hatch, Matthew Hebert, Manager, and David Hebert were present. Mr. Silvia read the notice of hearing into the record. (See attached.) He also read the letter from the Board of Health stating “the proposed smoking area is not in compliance with the minimum State Workplace Smoke-Free Regulations, and must be brought into compliance prior to Board approval.” and the “December 14, 1992 Department of Environmental Protection (DEP) approval notice for the existing 10,000 gallon sewage holding tank (tight tank) on the premise states: ‘There is to be no increase in sewage flow to the tight tank and no increase in square footage to the existing structure served by the tight tank.’ ... The proponents must seek approval in writing from the DEP to allow the increase as requested prior to Board approval.” (See attached.) The Building Commissioner did not submit approval of the proposed alteration. Down the Hatch must address issues concerning occupancy, use of sound proof materials and parking. Discussion followed. Dr. Bowcock motioned to continue the hearing to January 26, 2009. Mr. Murphy seconded. Vote was unanimous.

NEMASKET GROUP

Heidi Pina-Barnes, Assistant Program Director for the Nemasket Group, summarized the information she submitted on “job sampling”. (See attached.) Brief discussion followed. Ms. Pina-Barnes will attend the next meeting of the Commission on Disabilities to discuss the program. Next meeting is scheduled for February 4, 2009 at 6:00 p.m. at the Board of Public Works.

CIVIL SERVICE HEARING
TERESA DARWIN

Civil Service Hearing for Teresa Darwin was scheduled for 7:30 p.m. Attorney Crotty, Board of Health members Peter DeTerra, Dolores Caton and Jeannine Lopes, were in attendance. Also present were John Nunes and Sergeant Michael Botelho. Mr. Murphy stated he will “stand down” and left the room. Hearing was called to order. Mr. Silvia sworn in Mr. DeTerra, Ms. Caton, Ms. Lopes, Dr. Bowcock, Mr. Nunes and Sergeant Botelho as witnesses. Attorney Crotty stated that in a letter dated November 3, 2008, Attorney Beauregard said “If the Board chooses to go forward, the discussion should be public.....” (See attached.) In accordance with the provisions of Massachusetts General Law Chapter 31, Section 41, notice was given to Ms. Darwin on October 1, 2008 stating “On Wednesday, October 8, 2008 at 6:00 p.m. at the Office of the Board of Selectmen for the Town of Fairhaven, the Board, as your appointing authority, shall hold a hearing to determine whether you should be discharged, removed or suspended from your employment with the Town of Fairhaven. The reasons for the contemplated action are as follows: You have provided false information to the Town for the purpose of being paid for work which you did not perform; and you have tampered with and/or falsified records for the purpose of being paid for work which you did not perform” (See attached.) Attorney Crotty stated notice was received from Attorney Beauregard on October 7, 2008 indicating Ms. Darwin would not attend the hearing on October 8, 2008. (See attached.) On October 28, 2008, Ms. Darwin was notified the hearing would be continued to November 3, 2008. (See attached.) On November 3, 2008, Attorney Beauregard sent notification Ms. Darwin would not attend the hearing. (See attached.) The Board of Selectmen also scheduled two medical exams for Ms. Darwin. She did not attend either appointment. Testimony was taken from Sergeant Botelho. He said he met with the individuals listed in his summary report. Ms. Darwin's time sheets and warrants from December 2002 to September 2008 were reviewed. He also spoke with Erica Correira who helped John Nunes review the documents to determine the amount of time/money Ms. Darwin had over billed the Town. Sergeant Botelho's report was submitted to the Board of Selectmen and Ms. Darwin also has a copy. (See attached.) Dolores Caton stated she has been on the Board of Health the longest. It will be nine years in April. She testified time sheets were prepared by Terry Darwin. At a Board of Health Meeting, the Board looked it over, signed the sheet and returned it to Ms. Darwin. She said the Board meets every other week and meetings start at 7:00 p.m. Meeting rarely go more than two hours and usually last only an hour. She said she was surprised to see Ms. Darwin had listed meetings lasting four to five hours. She said the Board of Health never had meetings that ran that long. Peter DeTerra, Chairman of the Board of Health, stated this is his second term on the Board. He has been a member of the Board of Health for five years and never missed a meeting. He stated time sheets were preapproved before Ms. Darwin filled in the number of hours. Ms. Darwin came in on hour before the meeting for preparation time. He said when the time clock was installed in the Town Hall, he noticed that Ms. Darwin's time sheets showed a significant decrease in overtime for meetings. Dr. Bowcock stated the Town only went back six years because of the

Selectmen's Meeting – December 1, 2008

statute of limitations. This issue may have gone on longer than six years. John Nunes, Director of Finance/Treasurer testified that he had the Payroll Clerk pull out all time sheets and work sheets that were available. He went back to 2002. He said Ms. Darwin over paid herself and paid herself for meetings that were never held. He said "white out" was used on time sheets. The dollar amount, gross amount and totals were changed. Mr. Nunes showed the Board of Selectmen and Board of Health a time sheet with "white out". (See attached.) Mr. Nunes stated that since October 4, 2002, Ms. Darwin over paid herself for 215.84 hours of overtime pay that she never worked. Total dollar amount is \$3,848.95. Dr. Bowcock stated some Board of Health Meetings were held during the work day. Mr. Nunes testified that Ms. Darwin submitted for those hours when she was already working. She requested payment for six meetings during the day. Ms. Caton said there were maybe two meetings during the day, but never six. It was very rare to have a meeting during the day. Ms. Caton said she has not missed one meeting since she was elected to the Board of Health. Peter DeTerra testified he did discuss time cards with Ms. Darwin. He did place a disciplinary letter in her personnel folder. He said there were issues with meeting minutes, not listing who was present at a meeting, times of meetings, etc. Town Counsel said there was a prior incident in which a reprimand was placed in Ms. Darwin's personnel folder. None of the present members of the Board of Health were on the Board then. Jeffrey Osuch stated, per the Health Agent, the file no longer exists or minutes of the meeting. The incident dealt with events that took place after a hurricane. She issued a permit to her husband. Mr. Osuch summarized the June 18, 2008 letter to all Town Hall employees regarding the time clock. (See attached.) Mr. DeTerra said she was going to other departments to have her time card initialed. Dr. Bowcock motioned to terminate the employment of Mary Teresa Darwin as of today, December 1, 2008. The following reasons have resulted in this termination. 1. Mary Teresa Darwin allegedly committed larceny by embezzlement by providing false information to the Town of Fairhaven for the purpose of being paid for work, which you did not perform. 2. Mary Teresa Darwin has tampered with and/or falsified records for work, which she did not perform. 3. Mary Teresa Darwin has been on sick leave, but has refused to be examined by a physician selected by the Town of Fairhaven. This is in direct violation of Town personnel by-laws, as well as the Clerical Union Contract. 4. In 1992, a letter of reprimand was placed in the personnel file of Mary Teresa Darwin as a result of her issuing falsified documents. Ms. Darwin issued a Board of Health permit without board approval. The letter is no longer in the personnel file of Mary Teresa Darwin. 5. As the keeper of records, the Board of Health meeting minutes from 1982 until 1998 are missing, misplaced or destroyed. The meeting minutes cannot be found in the Board of Health Office. Attorney Crotty advised that Ms. Darwin could only be terminated on the reasons stated in the October 1, 2008 notice of hearing. Dr. Bowcock withdrew the motion. Dr. Bowcock motioned to terminate Ms. Darwin for allegedly committing larceny by embezzlement by providing false information to the Town of Fairhaven for the purpose of being paid for work, which she did not perform. 2. She tampered with and/or falsified records for work, which she did not perform. Mr. Silvia seconded the motion. It was so voted. The hearing concluded at 8:15 p.m. Mr. Murphy returned to the meeting.

Selectmen's Meeting – December 1, 2008

EXECUTIVE SECRETARY'S REPORT

On December 2, 2008 at 1:00 p.m., Dr. Bowcock and Jeffrey Osuch will meet with Ken Smith from Smith Energy.

Town Hall Job Meeting is scheduled for 2:30 p.m. on December 2, 2008.

Mr. Osuch will attend the SEMASS meeting on December 3, 2008 at 9:00 a.m. in Rochester.

Jeffrey Osuch will meet with Forrest Lindwall and Kevin Mooney on December 3, 2008 at 2:30 p.m. to discuss the West Island Causeway Dredging Project.

Meeting with Nationwide Insurance is scheduled for 10:00 a.m. on December 4, 2008 at the Police Station. Jeffrey Osuch and the Police and Fire Chiefs will attend.

Mattapoissett River Valley Water District Sub-Committee will meet on December 4, 2008 at 3:30 p.m.

Council on Aging will meet on December 8, 2008 at 9:30 a.m.

The Mattapoissett River Valley Water District will meet at the Board of Public Works on December 9, 2008 at 4:30 p.m.

SRPEDD will host a meeting at the Seekonk Town Hall on December 11, 2008 from 10:00 a.m. to 12:00 noon to discuss regionalism.

Dr. Bowcock motioned that Mr. Silvia sign Change Order #2 in the credit amount of \$1,080.00 to the Contract with Contractors Network, Inc., 190 Taunton Avenue, Seekonk, MA for the Union Wharf Emergency Repairs Project. Mr. Murphy seconded. Vote was unanimous.

Dr. Bowcock motioned to approve payment to NER Construction Management, Inc., 867 Woburn Street, Wilmington, MA in the amount of \$97,479.88 for the Town Hall Exterior Masonry Project. Mr. Murphy seconded. Vote was unanimous.

Dr. Bowcock motioned to approve payment to Dyer Brown SouthCoast, 65 William Street, New Bedford, MA in the amount of \$5,138.75 for a design contract amendment for Phase I of the Town Hall Exterior Masonry Project. Mr. Murphy seconded. Vote was unanimous.

A letter was received from Elaine and Chris Stephens requesting the Selectmen accept their offer to donate Lots 251 and 253 on Map 43C to the Town for conservation

Selectmen's Meeting – December 1, 2008

purposes. Dr. Bowcock motioned to accept the offer. Mr. Murphy seconded. Vote was unanimous.

The Board of Health submitted a request for Authorization for Legal Services for a Housing Court Trial scheduled for December 22, 2008 regarding a sewer tie in demand at 62 Grandview Avenue. Dr. Bowcock motioned to approve the request. Mr. Murphy seconded. Vote was unanimous.

The Harbormaster submitted a request for Authorization for Legal Services to remove a derelict vessel at Union Wharf. Dr. Bowcock motioned to approve the request. Mr. Murphy seconded. Vote was unanimous.

BOARD OF PUBLIC WORKS

Mr. Silvia summarized the letter from the Board of Public Works on "Potential Public Works Stimulus Package Projects. (See attached.) Brief discussion followed. Mr. Murphy suggested the School Department also put together a listing of projects.

CITY OF NEW BEDFORD

Mr. Silvia read the letter from Rita D. Arruda, New Bedford City Clerk/Clerk of the City Council, requesting support for commuter rail work to start as soon as possible. (See attached.) Dr. Bowcock motioned to send a letter to the Mayor supporting his initiative "to get the commuter rail work started as soon as possible." Mr. Murphy seconded. Vote was unanimous.

SRPEDD

A notice was received from SRPEDD stating SRPEDD cities and towns are entitled to technical assistance from SRPEDD. Every year each SRPEDD Commissioner (Selectmen's representative and Planning Board representative) is allocated 20 hours for municipal assistance. This year, additional technical assistance services are available, courtesy of the Commonwealth of Massachusetts and the legislature. SRPEDD received funding under the District Local Technical Assistance program to assist in two areas: Sustainable Development/Land Use and Municipal Partnerships.

DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT

William Roth summarized his letter regarding the Fairhaven/New Bedford Bridge. (See attached.) Mr. Roth will pursue the project.

Selectmen's Meeting – December 1, 2008

SELECTMEN'S MEETING SCHEDULE
WINTER 2009

Dr. Bowcock motioned to schedule Selectmen's Meeting for January 5th, 12th, 26th, February 9th, 23rd, March 9th and March 23rd, 2009. Mr. Murphy seconded. Vote was unanimous.

HOLIDAY SCHEDULE – DECEMBER 26TH & JANUARY 2ND

Mr. Osuch summarized a draft letter to all non-clerical personnel regarding the day after Christmas and the day after New Year's. Both days are non-working days for the Clerical Union. The letter requests any non clerical personnel wishing to take one or both days off, must use a personal day or vacation day and must inform the Selectmen's Office by December 12th. A decision if Town Hall will be open on these days will be made by the Board of Selectmen based on how many offices will be staffed.

TOURISM DEPARTMENT

The Tourism Department submitted an application to use the Town Hall Auditorium for the "Old Time Holiday Shops" on December 13th from 8:00 a.m. to 5:00 p.m. Dr. Bowcock motioned to approve the application. Mr. Murphy seconded. Vote was unanimous.

IMPROVEMENT ASSOCIATION

Mr. Silvia left the room. The Improvement Association submitted a request to use the Town Hall for the annual Christmas Sing-a-Long on Saturday, December 20th beginning at 6:00 p.m. Mr. Murphy motioned to approve the request. Dr. Bowcock seconded. It was so voted. Mr. Silvia returned to the meeting.

STYLIN CYCLES, INC.

Joseph Morra of Stylin Cycles, 34 Holcomb Street, was in attendance and summarized his letter to the Board requesting restrictions on his Class II and Repair License be amended. (See attached.) Mr. Morra stated nothing in the business is changing. He needs the back shop for business because he is outgrowing the current area. At present, the restrictions are: "For the sale of motor cycles; the repair shop and office shall be used by the licensee and no portion of the building shall be sublet. Not to use entrance/exit on Bridge Street." The restrictions were placed on the licenses five years ago, when Mr. Morra originally applied for the licenses. An abutter to the property, Vic Oliveira, had numerous problems with the former owner. Mr. Morra stated he lives and works on the property and does have a good relationship with Mr. Oliveira and other neighbors. Mr. Oliveira agreed. He has no objections to the restrictions being amended. Dr. Bowcock motioned to approve the changes as requested. Mr. Murphy seconded. Vote was

Selectmen's Meeting – December 1, 2008

unanimous. Licenses shall now read: "For the sale of motor cycles. The repair shop and office shall be used by the licensee and no portion of the building shall be sublet."

NSTAR GAS

Dr. Bowcock motioned to approve the petition to install a new gas service at 1 Calumet Road. Mr. Murphy seconded. Vote was unanimous. (Approved by the Board of Public Works.)

2009 LICENSE RENEWALS

Dr. Bowcock motioned to approve renewal of the following Common Victualer Licenses: Friendly Ice Cream, Subway (42 Fairhaven Commons Way), Jake's Diner, Morgan's Restaurant, Fairhaven Gas (Donut Shop) and Jeffrey's Fairhaven House of Pizza. Mr. Murphy seconded. Vote was unanimous.

OTHER MATTERS

St. Joseph's School will hold the annual St. Nicholas Bazaar on Saturday, December 6, 2008 from 9:00 a.m. to 3:00 p.m.

EXECUTIVE SESSION

At 8:17 p.m., Dr. Bowcock motioned to go into executive session to discuss a personnel issue in the Tax Collector's Office, a personnel issue in the Planning Department, potential extension of the SEMASS Contract and not to reconvene in open session. Mr. Murphy seconded. Vote was unanimous. Roll call vote 3-0.

Jan St. Germain
Secretary